

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 10, 2009 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decio (0,421,504) in view of Nergiz taken with Gutfinger.

Decio discloses a margarine that is made from olive oil and butter. The spread is made from unrefined olive oil and has a characteristic olive flavor (example 1). Decio discloses that it is known in the art to use refined oil in manufacture and that refining removes flavor components from oil

(column page 2, lines 5-30). Decio discloses that it is known in the art to use refined oil, such as olive oil, in margarine manufacture. The claims appear to differ from the reference in the recitation of the use of refined olive oil that has particular polyphenol content. Nergiz teaches that refining reduces the polyphenol content of olive oil by 79-88% (abstract). Gutfinger teaches the polyphenol content of a variety of olive oils in Table 1. Even though 88% of the polyphenols would be removed during refining, one can easily determine that 10 ppm and 50 ppm polyphenols would be expected to be retained in olive oil 1 and 24 in Table 1 of Gutfinger. It would have been obvious to one of ordinary skill in the art to eliminate the olive oil odor of Decio by using refined olive oil and to adjust the polyphenol content of the spread by selecting an olive oil with the enough polyphenols in it. It is appreciated that the refining temperatures and pressures of the olive oil are not mentioned but the claims are directed to a product and not to the way it is made.

Claims 1-3, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decio (0,421,504) in view of in view of Lai Ganguli (EP 0,849,353).

Decio discloses a margarine that is made from olive oil and butter. The spread is made from unrefined olive oil and has a characteristic olive flavor (example 1). The claims appear to differ from Decio in the recitation of the extent of olive odor and polyphenols in the composition. Lai Ganguli teaches that olive oil with high polyphenols can be enzymatically debittered to provide a debittered olive oil with a high polyphenol content (abstract). The polyphenols in olive oil are said to enhance the oxidative stability of the oil and is also said to increase the oxidative stability of LDL cholesterol in the blood. It would have been obvious to fortify or replace the olive oil of Decio with the olive oil of Lai Ganguli to further increase the healthful effect of polyphenol from olive oil in margarine. To the extent that polyphenols have added a flavor component to olive oil and the flavor of the olive oil is improved by debittering the oil, one of ordinary skill in the art would expect the perceived olive oil flavor or odor to be reduced by the Lai Ganguli process. It is appreciated that the refining conditions of claims 11 and 12 are not mentioned but the claims are directed to a product and not to the process of making the product.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Decio in view of Lai Ganguli as applied to claims 1-3, 11 and 12 above, and further in view of Baileys at page 67.

The claims appear to differ from Decio in view of Lai Ganguli in the recitation of the presence of squalene in the oil. Baileys teaches at page 67 that squalene is a natural constituent of olive oil and provides a range of the amount of squalene that is within the range of the claims. Thus one would expect that the spread of Decio that contains olive oil to also contain squalene. Further one would not expect the squalene content of olive oil to be reduced by the treatment process of Lai Ganguli because squalene is a hydrocarbon, soluble in oil, which would not be expected to be extracted by the water of Lai Ganguli.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-

1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

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